

Remarks

Applicant has reviewed the Office Action dated as mailed August 10, 2006. Paragraphs [0022], [0024], and [0026] have been amended to informalities. The present application contains claims 1-44. Claims 1, 9, 13, 21, 30, and 38 have been amended.

Claim Rejections under 35 U.S.C. §102

Claim 1 was rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 6,973,578 by McIchionc, (hereinafter "McIchionc"). This rejection is respectfully traversed. Claim 1 has been amended to recite:

"allowing one of a highest security level, a middle security level and a lowest security level to be set;

flagging a program as being suspect for possibly containing a virus in response to at least one of:

opening a local file on a local file system to perform a read operation and opening a shared file on a shared or network file system to perform a right or append operation with the local file and the highest security level being set;

the program reading or opening itself and the program attempting to write or append any content to the shared file on the shared or network file system or to write or append any content to the local file on the local file system and at least the medium security level being set;

the program attempting to write or append the local file to the shared or network file system and preserve a file name of the local the local file in the shared or network file system and at least the lowest security level being set; and

the program attempting to write or append a remote file to the local file and at least a medium security level being set."

Applicant respectfully submits that McIchionc does not teach or suggest the features of the present invention as recited in amended claim 1 above. McIchionc does not teach or suggest allowing one of a highest security level, a middle security level and a lowest security level to be set. McIchionc may teach that an indication is received that a file is being accessed by a process but McIchionc does not teach or suggest flagging a program as being suspect or possibly containing a

virus in response to at least one of the specific operations or set of conditions recited in claim 1. McIchionc also does not teach or suggest a particular security level being associated with each specific operation or set of operations. Furthermore, McIchionc does not teach or suggest flagging the program in response to occurrence of the specific recited operation or set of operations and the particular security level also being set that is associated with the specific operation or set of operations, as provided by the present invention as recited in amended claim 1. For all of these reasons, Applicant respectfully submits that claim 1 is patentably distinguishable over McIchionc, and reconsideration and withdrawal of the 35 U.S.C. §102(e) rejection of claim 1 is respectfully requested.

Claim Rejections Under 35 U.S.C. §103

Claims 2, 6, 8-9, 13-16, 21, 23-25, 28, 30, 32-34, 38, and 40-43 were rejected under 35 U.S.C. §103(a) as being unpatentable over McIchionc as applied to claim 1 and in view of Norton (Article entitled "Norton AntiVirus™ Corporate Edition User's Guide, dated 09/11/2001; hereinafter Norton). This rejection is respectfully traversed. Applicant respectfully submits that this rejection under 35 U.S.C. §103 does not follow the M.P.E.P. §706.02(j) which states:

"After indicating that the rejection is under 35 U.S.C. §103, the examiner should set forth in the Office Action: . . . (B) the difference or differences in the claim over the applied reference(s), (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and (D) an explanation of why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification . . . The teaching or suggestion to make the claimed combination and the reasonable expectation of the success must both be found in the prior art and not based on applicant's disclosure." *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully submits that there is no teaching or suggestion in McIchionc and Norton that their teachings may be combined so as to provide the present invention as recited in the claims and such motivation only comes from Applicant's disclosure. This approach constitutes impermissible hindsight and must be avoided.

With respect to the rejection of claims 2, 6 and 8 under 35 U.S.C. §103(a) as being unpatentable over McIchionc in view of Norton, even if it were proper to combine McIchionc and Norton, they still would not provide the present the invention as recited in claims 2, 6 and 8. These claims recite additional features which further patentably distinguish over McIchionc and Norton. These claims also depend directly from independent claim 1, and by virtue of that dependency, contain all of the features of independent claim 1. Applicant respectfully submits that Norton adds nothing to the teachings of McIchionc so as to render claim 1 unpatentable. Accordingly, Applicant respectfully submits that claims 2, 6 and 8 are also patentably distinguishable over McIchionc and Norton, whether considered individually or combined, and reconsideration and withdrawal of the 35 U.S.C. §103(a) rejection of claims 2, 6 and 8 is respectfully solicited.

Regarding the rejection of claim 9 under 35 U.S.C. §103(a) as being unpatentable over McIchionc, claim 9 has been amended to recite “allowing a security level to be set.” Applicant respectfully submits that there is no teaching or suggestion in McIchionc or Norton of allowing a security level to be set as provided by the present invention as recited in claim 9. Therefore, Applicant respectfully submits that claim 9 is patentably distinguishable over McIchionc and Norton, whether considered individually or combined, and reconsideration and withdrawal of the Section 103 rejection of claim 9 is respectfully solicited.

With respect to the rejection of claims 13-16 as being unpatentable over McIchionc in view of Norton, these claims contain additional features which further patentably distinguish over the cited documents. For example, claim 13 recites “following a predefined procedure in response to the level of security set.” The Office Action referred to page 32, Section: “Configuring Custom Scans” of Norton for teaching this feature. The Section: “Configuring Custom Scans” and the quotation from Norton recited in the Office Action actually appear to be on page 31 of Norton. This recitation from Norton discusses creating a “Custom Scan” restricted to a set of files or folders that are regularly scanned. Applicant respectfully submits that Norton does not teaching or suggestion in this section of Norton or anywhere else in Norton about setting a level of security and following a predefined procedure in response to the level of security set. Accordingly, Applicant respectfully submits that claim 13 is patentably distinguishable over McIchionc and Norton.

Regarding claim 15, the Office Action indicates that McIchionc in column 3, lines 56-67 and continuing in column 4, lines 1-9 recites the features of claim 15. Applicant respectfully submits that McIchionc does not teach or suggest the specific program operations recited in claim 15. Claims 13-16 also depend either directly or indirectly from independent claim 9. Because of this dependency, claims 13-16 contain all of the features of independent claim 9. Accordingly, claims 13-16 are also submitted to be patentably distinguishable over McIchionc and Norton, and reconsideration and withdrawal of the Section 103 rejection of claims 13-16 is respectfully requested.

Turning now to the rejection of independent claim 21 as being unpatentable over McIchionc and Norton, claim 21 has been amended to recite:

“a plurality of settable levels of security;
a predetermined procedure associated with each level of security to be followed in response to a current level of security being set for the predefined procedure and in response to an intent to perform a particular file system operation also associated with the currently set level of security...”

Applicant respectfully submits that there is no teaching or suggestion in McIchionc or Norton of a plurality of settable levels of security nor is there any teaching or suggestion in McIchionc or Norton of a predefined procedure associated with each level of security to be followed in response to a current level of security being set for the predefined procedure and in response to an intent to perform a particular file system operation also associated with the currently set level of security as recited in independent claim 21. Therefore, Applicant respectfully submits that claim 21 is patentably distinguishable over McIchionc and Norton, whether considered individually or combined, and reconsideration and withdrawal of the 35 U.S.C. §103 rejection of independent claim 21 is respectfully solicited.

Regarding the rejection of claims 23-25 and 28 under 35 U.S.C. §103(a) as being unpatentable over McIchionc in view of Norton, these claims recite additional features which further patentably distinguish over McIchionc and Norton. For example, claim 24 recites features

similar to claim 15, which as previously discussed, are not taught or suggested by either McIchionc or Norton. Additionally, claims 23-25 and 28 depend either directly or indirectly from independent claim 21, and by virtue of that dependency, contain all of the features of independent claim 21. Accordingly, Applicant respectfully submits that claims 23-25 and 28 are also patentably distinguishable over McIchionc and Norton, and reconsideration and withdrawal of the Section 103 rejection of these claims is respectfully solicited.

Turning now to the rejection of independent claim 30 as being unpatentable over McIchionc in view of Norton, claim 30 had been amended to recite:

“defining a plurality of settable levels of security;
providing a predefined procedure associated with each level of security to be followed in response to a current level of security being set for the predefined procedure and in response to an intent to perform a particular file system operation also associated with the currently set level of security...”

Accordingly, claim 30 has been amended to recite similar features to independent claim 21. As discussed with respect to claim 21, McIchionc and Norton do not teach or suggest defining a plurality of settable levels of security nor do McIchionc and Norton teach or suggest providing a predefined procedure associated with each level of security to be followed in response to a current level of security being set for the predefined procedure and in response to an intent to perform a particular file system operation also associated with the currently set level of security, as provided by the present invention as recited in independent claim 30. Therefore, Applicant respectfully submits that independent claim 30 is patentably distinguishable over McIchionc and Norton, and reconsideration and withdrawal of the 35 U.S.C. §103(a) rejection of claim 30 is respectfully requested.

With regard to the rejection of claims 32-34 under 35 U.S.C. §103(a) as being unpatentable over McIchionc in view of Norton, these claims recite additional features which further patentably distinguish over the cited documents. Additionally, claims 32-34 depend directly from independent claim 30. Because of this dependency, claims 32-34 contain all of the features of independent claim 30. Therefore, claims 32-34 are submitted to also be patentably distinguishable over McIchionc and

Norton, and reconsideration and withdrawal of the Section 103 rejection of these claims is respectfully solicited.

With regard to the rejection of independent claim 38 under 35 U.S.C. §103(a) as being unpatentable over McIchionc in view of Norton, claim 38 has been amended to recite “allowing a security level to be set.” As previously discussed, neither McIchionc nor Norton teach or suggest the feature of allowing a security level to be set. Therefore, Applicant respectfully submits that claim 38 is patentably distinguishable over McIchionc and Norton, and reconsideration and withdrawal of the Section 103 rejection of claim 38 is respectfully solicited.

With regard to the rejection of claims 40-43 under 35 U.S.C. §103(a) as being unpatentable over McIchionc in view of Norton, these claims recite additional features which further patentably distinguish over the cited documents. Furthermore, these claims depend either directly or indirectly from independent claim 38, and by virtue of the dependency, contain all of the features of claim 38. Accordingly, Applicant respectfully submits that these claims also patentably distinguish over McIchionc and Norton, and reconsideration and withdrawal of the 35 U.S.C. §103 rejection of claims 40-43 is respectfully solicited.

Claims 3-5 were rejected under 35 U.S.C. §103(a) as being unpatentable over McIchionc as applied to claim 1 and in view of U.S. Patent Pub. 2004/0025015 by Satterlee et al. (hereinafter Satterlee). This rejection is respectfully traversed. Applicant respectfully submits that there is no teaching or suggestion in McIchionc and Satterlee that their teachings may be combined so as to provide the present invention as recited in the claims in such motivation only comes from a reading of the present application. Even if it were proper to combine McIchionc and Satterlee, they still would not provide the present invention as recited in the claims. Claims 3-5 depend directly from independent claim 1, and by virtue of this dependency, these claims contain all of the features of claim 1. Applicant respectfully submits that Satterlee add nothing to the teachings of McIchionc so as to render independent claim 1 unpatentable. Therefore, claims 3-5 are respectfully submitted to be patentably distinguishable over McIchionc and Satterlee, whether considered individually or

combined, and reconsideration and withdrawal of the 35 U.S.C. §103 rejection of claims 3-5 is respectfully requested.

Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over McIchionc as applied to claim 1 and further in view of U.S. Patent Pub. 2002/0174358 by Wolff et al. (hereinafter "Wolff"). Applicant respectfully submits that there is no teaching or suggestion in McIchionc or Wolff that their teachings may be combined so as to provide the present invention as recited in the claims and such motivation only comes from a reading of the present application. Even if it were proper to combine McIchionc and Wolff, they still would not provide the present invention as recited in the claims. Claim 7 depends directly from independent claim 1 and because of that dependency contains all of the features of independent claim 1. Applicant respectfully submits that Wolff adds nothing to the teachings McIchionc so as to render independent claim 1 unpatentable. Accordingly, claim 7 is submitted to be patentably distinguishable over McIchionc and Wolff, and reconsideration and withdrawal of the Section 103 rejection of claim 7 is respectfully requested.

Claims 10-12, 17, 19-20, 22, 26, 29, 31, 35, 37, 39, and 44 were rejected under 35 U.S.C. §103(a) as being unpatentable over McIchionc as applied to claim 1 and in view of Norton and further in view of Satterlee. This rejection is respectfully traversed. Turning initially to the rejection of claims 10-12, 17, and 19-20, these claims recite additional features which further patentably distinguish over the cited documents. Additionally, these claims depend either directly or indirectly from independent claim 9. As previously discussed, claim 9 has been amended to patentably distinguish over McIchionc and Norton. Applicant further respectfully submits that Satterlee adds nothing to the teachings of McIchionc and Norton so as to render independent claim 9 unpatentable. Accordingly, claims 10-12, 17, and 19-20 are submitted to be patentably distinguishable over McIchionc, Norton and Satterlee, whether considered individually or combined, and reconsideration and withdrawal of the Section 103 rejection of these claims is respectfully solicited.

Turning now to the rejection of claims 22, 26 and 29 under 35 U.S.C. §103(a) as being unpatentable over McIchionc in view of Norton and further in view of Satterlee, these claims recite additional features which further patentably distinguish over the cited documents. Additionally,

these claims depend either directly or indirectly from independent claim 21. As previously discussed, independent claim 21 has been amended to patentably distinguish over McIchionc and Norton. Applicant respectfully submits that Satterlee adds nothing to the teachings of McIchionc and Norton so as to render independent claim 21 unpatentable. Accordingly, claims 22, 26 and 29 are also submitted to be patentably distinguishable over the cited documents, and reconsideration and withdrawal of the Section 103 rejection of claims 22, 26 and 29 is respectfully solicited.

Regarding the rejection of claims 31, 35 and 37 under 35 U.S.C. §103(a) as being unpatentable over McIchionc, Norton and Satterlee, these claim recite additional features which further patentably distinguish over the cited documents. Furthermore, these claims depend either directly or indirectly from independent claim 30. As previously discussed, claim 30 has been amended to patentably distinguish over McIchionc and Norton. Applicant respectfully submits that Satterlee adds nothing to the teachings of McIchionc and Norton so as to render independent claim 30 unpatentable. Therefore, claims 31, 35 and 37 are also submitted to be patentably distinguishable over McIchionc, Norton and Satterlee, whether considered individually or combined, and reconsideration and withdrawal of the 35 U.S.C. §103 rejection of claims 31, 35 and 37 is respectfully requested.

Turning now to the rejection of claims 39 and 44 under 35 U.S.C. §103(a) as being unpatentable over McIchionc in view of Norton and further in view of Satterlee, these claims depend either directly or indirectly from independent claim 38, and because of this dependency contain all of the features of independent claim 38. As previously discussed, claim 38 has been amended to patentably distinguish over McIchionc and Norton. Applicant respectfully submits that Satterlee adds nothing to the teachings of McIchionc and Norton so as to render independent claim 28 unpatentable. Therefore, claims 39 and 44 are also submitted to be patentably distinguishable over McIchionc, Norton and Satterlee, and reconsideration and withdrawal of the Section 103 rejection of these claims is respectfully solicited.

Claim 18 was rejected under 35 U.S.C. §103(a) as being unpatentable over McIchionc as applied to claim 1 and in view of Norton and in further view of Satterlee and in further view of

Wolff. As previously discussed, there is no teaching or suggestion in any of these documents that their teachings may be combined so as to provide the present invention and such motivation only comes from a reading of the present application. Even if it were proper to combine these documents, they still would not provide the present invention as recited in claim 18. Claim 18 depends indirectly from independent claim 9. Because of this dependency, claim 18 contains all of the features of independent claim 9 and all intervening dependent claims. As previously discussed, claim 9 has been amended to patentably distinguish over McIchionc and Norton. Applicant further respectfully submits that Satterlee and Wolff add nothing to the teachings of McIchionc and Norton so as to render independent claim 9 unpatentable. Therefore, Applicant respectfully submits that dependent claim 18 is also patentably distinguishable over the cited documents, and reconsideration and withdrawal of the Section 103 rejection of claim 18 is respectfully requested.

Claims 27 and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over McIchionc as applied to claim 1 and in view of Norton and further in view of Wolff. Claim 27 depends indirectly from independent claim 21 and claim 36 depends indirectly from independent claim 30. Because of these dependencies, claims 27 and 36 contain all of the features of the referenced independent claim and any intervening dependent claims. As previously discussed, independent claims 21 and 30 have been amended to patentably distinguish over McIchionc and Norton. Applicant respectfully submits that Wolff adds nothing to the teachings of McIchionc and Norton so as to render independent claims 21 and 30 unpatentable. Accordingly, claims 27 and 36 are also submitted to be patentably distinguishable over McIchionc, Norton and Wolff, and reconsideration and withdrawal of the Section 103 rejection of claims 26 and 27 is respectfully solicited.

Conclusion

For the foregoing reasons, the Applicant respectfully submits that all of the claims in the present application are in condition for allowance. Reconsideration and withdrawal of the rejections and allowance of the claims at the earliest possible date are respectfully solicited.

If the Examiner has any questions about the present Amendment or anticipates finally rejecting any claim of the present application, a telephone interview is requested.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 13-4365.

Respectfully submitted,

James E. Aston, et al.

(Applicant)

Date: Nov. 8, 2006

By: Charles L. Moore

Charles L. Moore

Registration No. 33,742

Moore & Van Allen, PLLC

P.O. Box 13706

Research Triangle Park, N.C. 27709

Telephone: (919) 286-8000

Facsimile: (919) 286-8199